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DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

A-580-816

Certain Corrosion-Resistant Steel Flat Products from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Results and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: The Court of International Trade (CIT or Court) sustained in full the Department of Commerce's (the Department) second remand results pertaining to the fifteenth administrative review of the antidumping duty order on certain corrosion-resistant steel flat products from the Republic of Korea covering the period of August 1, 2007, through July 31, 2008. The Department is notifying the public that the final judgment in this case is not in harmony with the final results of the administrative review, and that the Department is amending the final results with respect to the weighted-average dumping margins assigned to Union Steel Manufacturing Co., Ltd. (Union), Hyundai HYSCO (HYSCO), and Dongbu Steel Co., Ltd. (Dongbu).

DATES: Effective December 27, 2016.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3692.

## SUPPLEMENTARY INFORMATION:

### Background

On March 15, 2010, the Department of Commerce (the Department) issued the *Final Results*.<sup>1</sup> Four parties contested the Department's findings in the *Final Results*. Three of the four plaintiffs, Union, HYSCO, and Dongbu, are Korean producers/exporters of certain corrosion-resistant steel flat products (CORE). Union and HYSCO were mandatory respondents in the fifteenth administrative review; Dongbu was an unexamined respondent subject to the non-selected rate. The remaining plaintiff, United States Steel Corporation (U.S. Steel), was a petitioner in the fifteenth administrative review.

In the *Final Results*, the Department assigned weighted-average dumping margins of 14.01 percent to Union and 3.29 percent to HYSCO.<sup>2</sup> As an unexamined respondent, Dongbu received the margin of 8.65 percent that the Department assigned to all unexamined respondents, which the Department calculated as a simple average of the non-*de-minimis* margins of the examined respondents.<sup>3</sup>

On May 25, 2012, the CIT issued its opinion in *Union Steel I*, which remanded various aspects of the *Final Results* to the Department.<sup>4</sup> In particular, the Court made the following holdings:

(1) the Department's decision to use financial data pertaining only to the 2008 fiscal year of Union's parent company in determining Union's interest expense ratio cannot be upheld on judicial review; (2) in response to defendant's request for a voluntary remand, the court will order the Department to reconsider the "quarterly cost methodology to apply the "recovery-of-costs" test to home-market sales of Union and HYSCO and the "indexing" methodology wherever used in the *Final Results*; (3) on remand, the

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<sup>1</sup> See *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Final Results of the Fifteenth Administrative Review*, 75 FR 13490 (March 22, 2010) (*Final Results*) and accompanying Decision Memorandum (Final Decision Memorandum).

<sup>2</sup> See *Final Results*, 75 FR at 13491.

<sup>3</sup> *Id.*

<sup>4</sup> See *Union Steel Mfg. Co. v. United States*, 837 F. Supp. 2d 1307 (Ct. Int'l Trade 2012) (*Union Steel I*).

Department must reconsider the use in the Final Results of the quarterly-cost and indexing methodologies for various other purposes; (4) the Department must reconsider its decision to depart from its normal method for selecting comparison months of normal value sales; (5) in response to defendant's request for a voluntary remand, the court will order the Department to reconsider its decision to compare laminated CORE and non-laminated, painted CORE as “identical” merchandise; (6) in response to defendant's request for a voluntary remand, the court will order that Commerce reconsider the use of the zeroing methodology in the fifteenth review; (7) no relief is available on Dongbu's claim seeking an individually-determined dumping margin; and (8) in response to the defendant's request for a voluntary remand, remand is appropriate on U.S. Steel's challenge to the date of sale used for certain sales by HYSCO through a U.S. affiliate. The court determines, in addition, that any modifications to the weighted-average dumping margins of Union and HYSCO resulting from this remand shall be reflected in the rate applied to Dongbu.<sup>5</sup>

Pursuant to *Union Steel I*, the Department issued the First Remand Redetermination,<sup>6</sup> in which it addressed the Court's holdings and revised Union's margin from 14.01 percent to 9.85 percent and HYSCO's margin from 3.29 percent to 1.46 percent.<sup>7</sup> Again, based on a simple average of the margins calculated for Union and HYSCO, the Department changed Dongbu's margin from 8.65 percent to 5.56 percent.<sup>8</sup>

Following consideration of comments submitted to the CIT on the First Remand Redetermination and an oral argument, the Court issued its decision in *Union Steel II*, which affirmed in part, and remanded in part to the Department, various aspects of the First Remand Redetermination.<sup>9</sup> In particular, the Court remanded for the Department to address:

(1) the decision to make a major input adjustment when calculating Union's interest expense ratio; (2) the application of the modified “quarterly cost” methodology wherever used in the normal value calculations for Hyundai HYSCO . . . including the difference-in-merchandise (“DIFMER”) adjustments and constructed value (“CV”) determinations; (3) the application of the modified “quarterly cost” methodology for all aspects of the normal value calculations for Union except the revised sales-below-cost and recovery-of-costs tests; (4) the decision to depart from the normal method for selecting a comparison month when determining antidumping margins for Union and HYSCO; and (5) the

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<sup>5</sup> *Id.*, at 1310, 1337-38.

<sup>6</sup> See *Results of Redetermination Pursuant to Remand* (Sept. 24, 2012) (First Remand Redetermination).

<sup>7</sup> See First Remand Redetermination at 67.

<sup>8</sup> *Id.*

<sup>9</sup> See *Union Steel Mfg. Co. v. United States*, 968 F. Supp. 2d 1297 (Ct. Int'l Trade 2014) (*Union Steel II*).

decision to depart from the normal method by selecting the date of shipment, rather than the date of invoice, as the date of sale for certain sales that HYSCO made through a U.S. affiliate, Hyundai HYSCO USA, Inc.<sup>10</sup>

The Court also instructed the Department to “recalculate the margin for Dongbu based on the redetermined margins for Union and HYSCO.”<sup>11</sup>

In response to *Union Steel II*, the Department issued the Second Remand Redetermination in which it reconsidered the remanded issues and revised the 9.85 percent margin it previously determined for Union to 9.83 percent.<sup>12</sup> The Department revised HYSCO’s margin from 1.46 percent to 5.56 percent.<sup>13</sup> Once again assigning Dongbu a margin based on a simple average of the Union and HYSCO margins, the Department changed Dongbu’s margin from 5.56 percent to 7.70 percent.<sup>14</sup>

In *Union Steel III*, the CIT sustained in full the Department’s Second Remand Redetermination.<sup>15</sup> In particular, the CIT sustained the Department’s decision to depart from its 90/60-day window period regulation and to instead limit comparisons of individual U.S. sales to home market sales that occurred during the same quarter, based on the fact that the Department had relied on its quarterly cost methodology because there were significantly changing costs throughout the review period.<sup>16</sup> Furthermore, the Court sustained the Department’s determination to rely on invoice date instead of shipment date for determining the date of sale for HYSCO’s U.S. sales in the Second Remand Redetermination, because certain evidence in HYSCO’s questionnaire responses indicated that price remained subject to change after

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<sup>10</sup> *Id.*, at 1300, 1327-28.

<sup>11</sup> *Id.*

<sup>12</sup> *See Results of Redetermination Pursuant to Remand*, at 44 (Aug. 1, 2014) (Second Remand Redetermination).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *See Union Steel Mfg. Co. v. United States*, Ct. Int’l Trade Slip Op. 16-117 (Dec. 15, 2016) (*Union Steel III*), at 2, 26.

<sup>16</sup> *Id.*, at 16-20.

shipment.<sup>17</sup> Finally, the Court sustained four other aspects of the Second Remand Redetermination, which were not challenged by any party: (1) the Department’s calculation of Union Steel’s interest expense ratio; (2) the Department’s modification to its cost-recovery test as applied to HYSCO on remand, in which the Department discontinued relying on surrogate costs and relied instead on HYSCO’s actual costs from the quarters in which there was production during the period of review; (3) the Department’s decision to use unindexed quarterly cost data to calculate CV and DIFMER adjustments; and (4) the Department’s use of a surrogate-based method in calculating CV and DIFMER adjustments, which was different than the method used when applying its cost-recovery test to HYSCO in the Department’s First Remand Redetermination, which the Court had found objectionable in *Union Steel II*.<sup>18</sup>

Thus, in *Union Steel III*, the Court affirmed the following dumping margins as calculated by the Department in the Second Remand Redetermination: 9.83 percent for Union, 5.56 percent for HYSCO, and 7.70 percent for Dongbu.

### **Timken Notice**

In its decision in *Timken*,<sup>19</sup> as clarified by *Diamond Sawblades*,<sup>20</sup> the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s December 15, 2016, final judgement sustaining the Second Remand Redetermination constitutes a final decision of the Court that is not in harmony with the Department’s *Final Results*. This notice is published in fulfillment of the publication

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<sup>17</sup> *Id.*, at 11-13.

<sup>18</sup> *Id.*, at 5-11.

<sup>19</sup> See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

<sup>20</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

requirements of *Timken*. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending a final and conclusive court decision.

### **Amended Final Results**

Because there is now a final court decision, we are amending the *Final Results* with respect to the dumping margins calculated for Union, HYSCO, and Dongbu. Based on the Second Remand Redetermination, as affirmed by the CIT in *Union Steel III*, the revised dumping margins for Union, HYSCO, and Dongbu are 9.83 percent, 5.56 percent, and 7.70 percent, respectively.

In the event that the CIT's rulings are not appealed or, if appealed, is upheld by a final and conclusive court decision, the Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise based on the revised dumping margins listed above.

### **Cash Deposit Requirements**

The Department notified CBP to discontinue the collection of cash deposits on entries of the subject merchandise, entered or withdrawn from warehouse, on or after February 14, 2012, due to the revocation of the order.<sup>21</sup> Therefore, no cash deposit requirements will be imposed as a result of these amended final results.

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<sup>21</sup> See *Corrosion-Resistant Carbon Steel Flat Products from Germany and the Republic of Korea: Revocation of Antidumping and Countervailing Duty Orders*, 78 FR 16832, 16833 (March 19, 2013).

## **Notice to Interested Parties**

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

January 10, 2017

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